

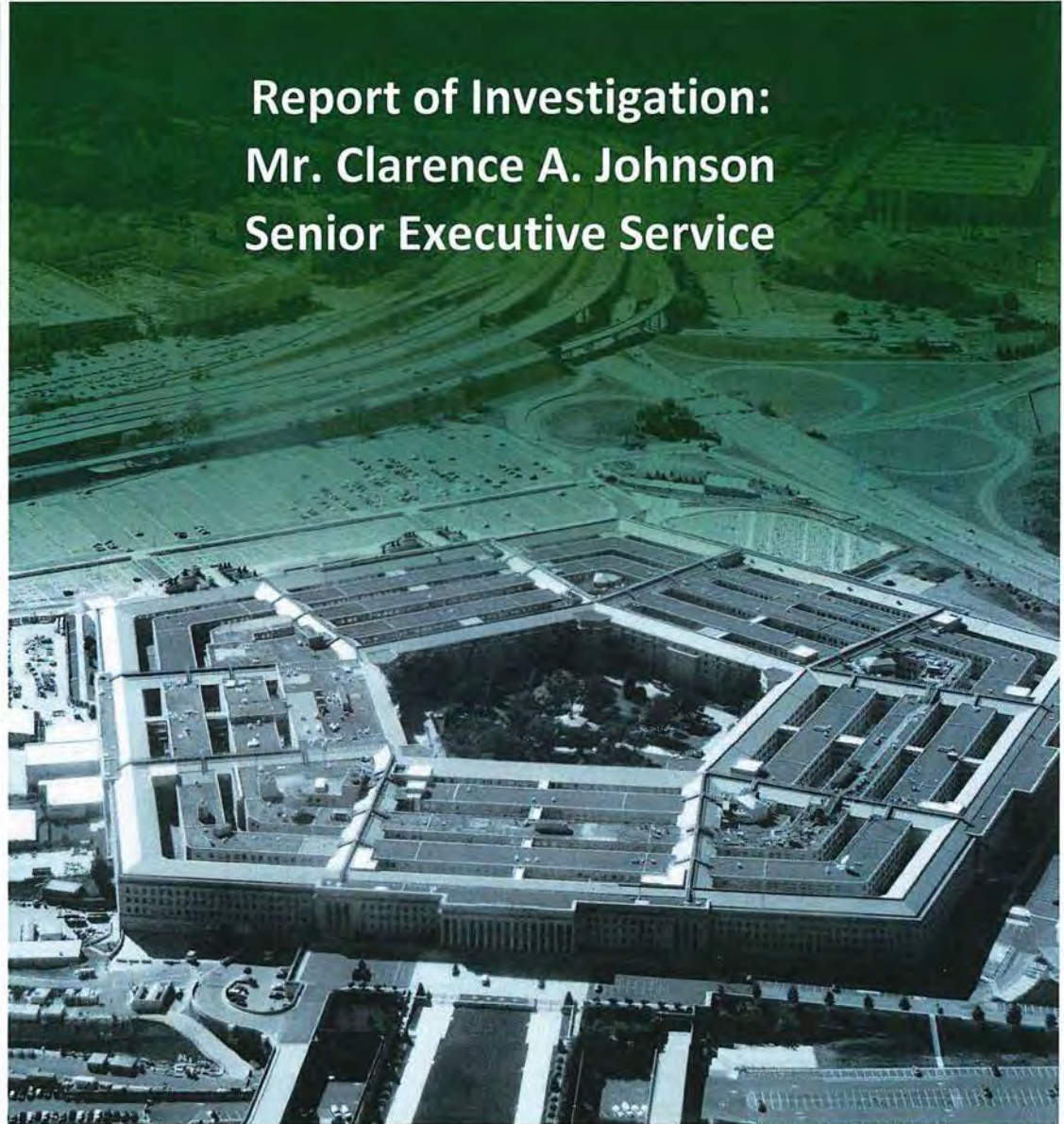
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INSPECTOR GENERAL

U.S. Department of Defense

October 20, 2014



Report of Investigation: Mr. Clarence A. Johnson Senior Executive Service

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

MEMORANDUM FOR INSPECTOR GENERAL

SUBJECT: Report of Investigation Concerning Mr. Clarence A. Johnson, Senior Executive Service
(Case 20130123-012504)

We recently completed our investigation to address allegations that Mr. Clarence A. Johnson, Senior Executive Service, while serving as Principal Director, Office of Diversity Management and Equal Opportunity (ODMEO), Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), improperly co-sponsored non-Federal entities (NFEs) and created an intimidating, offensive, or hostile working environment, in violation of DoD 5500.07-R, "Joint Ethics Regulation" (JER), and DoD Equal Employment Opportunity directives.

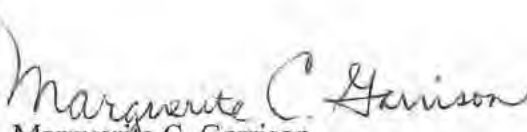
We substantiated one allegation. We conclude Mr. Johnson improperly co-sponsored NFEs that he had selected. We found that from August to October 2010, New Concepts Management Solutions (NCMS), an organization contracted by ODMEO to support its diversity outreach functions, paid \$226,000 for co-sponsorships of NFEs as directed by ODMEO. The JER requires DoD components and sponsored NFEs to enter into detailed written agreements for co-sponsorships. We determined that ODMEO did not execute written co-sponsorship agreements with any of the NFEs paid by NCMS and that Mr. Johnson authorized the NCMS payments to NFEs.

We did not substantiate the remaining allegation.

In accordance with our established procedure, by letter dated July 8, 2014, we provided Mr. Johnson the opportunity to comment on the preliminary results of our investigation. In his response, dated September 2, 2014, Mr. Johnson disagreed with our conclusions and asserted that Chapter 3 of the JER did not apply to his office's outreach activities. He also stated his office "does not co-sponsor events with NFEs" and does "not engage any event without a specific agreement" with the NFE. He cited a DoD "Ethics Counselor's Deskbook" (November 2013) provision regarding purchase of sponsorships or exhibitor booths at NFE events and stated that "captures the framework" his office uses.

After carefully considering Mr. Johnson's response, we stand by our conclusions. The report of investigation is attached.

We recommend the Under Secretary of Defense for Personnel and Readiness consider appropriate corrective action with regard to Mr. Johnson. We also identified potential temporary duty travel and civilian time and attendance issues among Mr. Johnson's employees. We recommend the USD(P&R) review these additional matters.


Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

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REPORT OF INVESTIGATION: MR. CLARENCE A. JOHNSON

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that Mr. Clarence A. Johnson, Senior Executive Service (SES), Principal Director, Office of Diversity Management and Equal Opportunity (ODMEO), Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), improperly co-sponsored non-Federal entities (NFEs) and created an intimidating, offensive, or hostile working environment. If substantiated, this conduct would be inconsistent with DoD 5500.07-R, "Joint Ethics Regulation" (JER) and DoD Equal Employment Opportunity (EEO) directives.¹

We substantiated one allegation. We conclude Mr. Johnson improperly co-sponsored NFEs that he had selected. We found that from August to October 2010, New Concepts Management Solutions (NCMS), an organization contracted by ODMEO to support its diversity outreach functions, paid \$226,000 for co-sponsorships of NFEs as directed by ODMEO. The JER requires DoD components and sponsored NFEs to enter into detailed written agreements for co-sponsorships. We determined that ODMEO did not execute written agreements with any of the NFEs paid by NCMS and that Mr. Johnson authorized the NCMS payments to the NFEs.

We also conclude Mr. Johnson did not create or cause an intimidating, offensive, or hostile working environment. We found that when Mr. Johnson learned of alleged workplace violence involving a male contractor employee and a female contractor employee, he initiated an internal, informal review of the alleged violence. The female contractor did not characterize the incident as an assault during the review. Mr. Johnson met with the parties involved and verbally counseled the male contractor. Several female witnesses also alleged that the male contractor repeatedly engaged in offensive self-touching of a sexual nature. We found that Mr. Johnson was not aware of the alleged offensive self-touching behavior by the same male contractor employee because no one reported it. The JER requires that employees treat individuals with dignity and respect. DoD EEO directives prohibit sexual harassment in the workplace. We determined Mr. Johnson's actions did not violate the JER and DoD EEO directives.

By letter dated July 8, 2014, we provided Mr. Johnson the opportunity to comment on the results of our investigation. In his response dated September 2, 2014, Mr. Johnson disagreed "with the conclusion that [his] office's diversity outreach engagements" were "inconsistent with the JER."² Mr. Johnson stated that Chapter 3 of the JER does not apply to "[ODMEO's] diversity outreach methodology" because ODMEO does not provide "substantial logistical support" or "develop the substantive aspects" of any supported NFE event. Mr. Johnson also

¹ The incoming complaints included additional allegations. Based on our initial fieldwork, we determined some did not merit further investigation and discuss them in Section III of the report.

² While we have included what we believe is a reasonable synopsis of Mr. Johnson's response, we recognize that any attempt to summarize risks over simplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and provided a copy of his response to the Management Official together with this report.

stated that his office “does not co-sponsor events with NFEs” and that “we do not engage any event without a specific agreement we work with the NFE.” Mr. Johnson cited a section of the DoD “Ethics Counselor’s Deskbook” (dated November 2013) pertaining to procurement of sponsorships or exhibitor booths at NFE events and stated that provision “captures the framework within which our office engages NFEs.”

After carefully considering Mr. Johnson’s response and reevaluating the evidence, we stand by our initial conclusion that Mr. Johnson improperly co-sponsored NFEs that he had selected during the period August to October 2010, in violation of the JER.

We recommend the USD(P&R) consider appropriate corrective action with regard to Mr. Johnson.

We also identified potential temporary duty travel and civilian time and attendance issues among Mr. Johnson’s employees. We recommend the USD(P&R) review these additional matters.

II. BACKGROUND

In 2003, Mr. Johnson became the Principal Director of ODMEIO after retiring from the U.S. Air Force. On October 15, 2010, Dr. Clifford Stanley, the USD(P&R), detailed Mr. Johnson to the Department of the Army for reasons unrelated to this investigation. In February 2012, Mr. Johnson returned to ODMEIO and resumed duties as Principal Director, where he serves today.

ODMEIO is an office within the USD(P&R). ODMEIO’s mission is to promote diversity and inclusion as a readiness imperative for DoD and to seek representational diversity at all levels, including general and flag officers and the Senior Executive Service. ODMEIO also manages the Workforce Recruitment Program in support of the DoD Disability Program; exercises management and oversight of the Defense Equal Opportunity Management Institute at Patrick Air Force Base, Florida; and is the proponent for DoD’s military equal opportunity and civilian EEO programs.

In September 2011, a Government Accountability Office (GAO) report (GAO-11-809) noted that DoD exercised little oversight of its policies and programs for addressing incidents of sexual harassment. GAO found that ODMEIO “has not developed an oversight framework – including clear goals, objectives, milestones, and metrics for measuring progress – to guide its efforts.”

III. SCOPE

We interviewed Mr. Johnson and 16 other witnesses with knowledge of matters at issue. We reviewed standards applicable to the events in question. Additionally, we evaluated documents obtained from ODMEIO records, including but not limited to Official Representation Fund (ORF) records; contracts, contractor activity records; and emails from multiple parties. In evaluating the incoming complaint, we determined two allegations did not warrant further

investigation for the reasons discussed below. Additionally, we identified two issues that require additional action and discuss them in Section V, "Other Matters."

Whistleblower Reprisal

The incoming complaint alleged Mr. Johnson engaged in whistleblower reprisal in July 2012 by (b)(6), (b)(7)(C)

The DoD Hotline forwarded the matter to the Directorate for Whistleblower Reprisal Investigations, which evaluated the complaint and recommended the complainant file with the Office of Special Counsel. We reviewed the complaint and determined it presented no new evidence. Accordingly, there was insufficient evidence to warrant further investigation.

Waste of Official Representation Funds (ORF)

The incoming complaint alleged Mr. Johnson wasted ORF. Some witnesses expressed concern about the total amount of ORF expended by ODMEQ. We reviewed disbursements made in 2009 and 2010. Based on our review, we found USD(P&R) employed a pre-event review and approval process, and Washington Headquarters Services, which administered and dispensed the funds, employed a post-event review and reconciliation process. We determined ODMEQ used ORF for authorized purposes. Accordingly, no further investigation was warranted.

Allegations Not Involving Mr. Johnson

The incoming complaint also included four allegations not involving Mr. Johnson. One of the four allegations resulted in a Defense Criminal Investigative Service investigation involving a senior civilian employee in ODMEQ. The other three allegations included an intern-on-intern assault that occurred outside the workplace, an assault in the workplace by a military member on a senior civilian employee, and a Privacy Act violation by a military member. We determined the intern matter was handled by local law enforcement. The other two incidents occurred after Mr. Johnson's departure from ODMEQ to a temporary detail and did not warrant further investigation by this office. The alleged simple assault, unreported at the time, occurred more than 2 years prior to this investigation. The alleged Privacy Act violation involved delivery of a For Official Use Only personnel roster to ODMEQ staff members and was reported to the Pentagon Force Protection Agency (PFPA) in November 2010.

IV. FINDINGS AND ANALYSIS

A. Did Mr. Johnson improperly co-sponsor NFEs?

Standards

DoD 5500.07-R, Joint Ethics Regulation, August 30, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 1, Section 2, "Definitions," defines an NFE as a "self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal Government."

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

JER, Chapter 3, "Activities with Non-Federal Entities"

Sub-section 3-206, "Co-sponsorship," states a DoD Component command or organization is a co-sponsor of an event when that DoD Component command or organization is one of the organizations that develops the substantive aspects of the event or provides substantial logistical support for the event. Co-sponsorship of events with NFEs is prohibited except as follows:

b. A DoD Component command or organization may co-sponsor a conference, seminar, or similar event with a non-Federal entity when all of the following requirements are met:

(1) The head of the DoD Component command or organization finds that the subject matter of the event (or co-sponsored discrete portion) is scientific, technical, or professional issues that are relevant to the mission of the DoD Component command or organization;

(2) The head of the DoD Component command or organization finds that the purpose of co-sponsorship is to transfer Federally developed technology or to stimulate wider interest and inquiry into the scientific, technical, or professional issues identified above and that the event is open to interested parties;

(3) The NFE is a recognized scientific, technical, educational, or professional organization approved for this purpose by the DoD Component Designated Agency Ethics Official (DAEO), giving due consideration to the prohibition against giving preferential treatment to non-Federal entity in 5 C.F.R. 2635.101(b)(8);

(4) The DoD Component command or organization accomplishes the co-sponsorship through a written agreement that includes the nature and purpose of the event; the undertakings and liabilities of the parties; funding responsibilities and costs (including admission fees); a disclaimer of Government liability if the DoD Component command or organization reduces the level of its participation or completely withdraws; and a statement that the non-Federal entity will not use the fact of co-sponsorship of the event to imply DoD endorsement of the organization or its other events.

(5) No admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for a co-sponsored event, or no admission fee (beyond what will cover

the reasonable costs of sponsoring the event) may be charged for the discrete portions of the event co-sponsored by the DoD Component.

Facts

The incoming complaint alleged Mr. Johnson improperly used a contract to pay “affinity groups for ‘outreach’ events.” Merriam-Webster defines “affinity group” as “a group of people having a common interest or goal or acting together for a specific purpose.” In diversity management, affinity groups are associated with networking groups or professional associations that are often race-, ethnic background-, or gender-based.³

ODMEO’s Outreach Program

ODMEO annually participates in over 50 outreach activities such as conferences, award luncheons, and other special recognition events involving NFEs to support its goal of promoting “DoD as an employer of choice and to increase diversity representation.” ODMEO’s operational focus of participating in outreach events started in 2003-04, and since then, ODMEO has assumed a greater role in planning, shaping, and coordinating outreach events with NFEs.

Mr. Johnson testified, “My job is to grow, or focus on growing, the presence of minorities and women in the [GS-] 12, 13, 14 pipeline for the SES.” Mr. Johnson stated, “Our mission is diversity outreach,” which involves informing “the diverse audience.” He added that ODMEO seeks affinity groups that have “a national reach” and influence.

Witnesses identified several affinity groups continually supported by ODMEO, including the National Association for the Advancement of Colored People (NAACP), the League of United Latin American Citizens (LULAC), and the Asian American Government Employees Network. ODMEO also supports educational organizations categorized as minority-servicing institutions (MSIs). The affinity groups and MSIs supported by ODMEO are NFEs.⁴

NFE Solicitation for “Sponsorship”

ODMEO outreach starts with NFE requests for support. Since 2003, MSI and affinity group NFEs have solicited DoD (through ODMEO) for “sponsorships” – essentially monetary and logistical support for their events – through letters, emails, phone calls, direct meetings, or a combination. Multiple witnesses, including Mr. Johnson, confirmed that the term “sponsorship” was typically used by NFEs and ODMEO staff members in letters, emails, and briefings to describe the process of requesting and providing DoD support for NFE outreach events.⁵ Typically, sponsorship requests for DoD support were addressed or forwarded to ODMEO.

³ New York Times, <http://www.nytimes.com/marketing/jobmarket/diversity/affinity.html>. Various Federal agencies, including the U.S. Department of State and the U.S. Navy, recognize affinity groups on their web sites.

⁴ The JER defines a non-Federal entity (NFE) as a “self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal Government.”

⁵ An ODMEO “Standard Operating Procedures” manual dated September 2008 has a section entitled “Sponsorship Package.”

As ODMEIO's Principal Director, Mr. Johnson decided which NFEs received ODMEIO support and the levels of such support, both monetary and logistical, in furtherance of ODMEIO's diversity mission. The total number of NFEs receiving ODMEIO monetary and logistical support has varied over the years and totaled 25 in 2013. The ODMEIO event calendar for June 2010 to May 2011 listed 20 NFEs scheduled for ODMEIO support in fiscal year (FY) 2010 and 30 NFEs for the calendar year (CY) 2010.

Witnesses testified that ODMEIO GS-15 diversity program managers provided input and recommendations to Mr. Johnson, who then determined which NFEs would be supported, as well as the level of support based on availability of funds. One witness testified that Mr. Johnson provided his program managers with a "prioritized list" of NFEs to be supported.

Mr. Johnson testified that ODMEIO evaluates NFEs soliciting DoD support to determine their national reach, influence within a diverse audience, and specialties such as science, math and technology, among other things.

ODMEIO Planning and Development of NFE Outreach Events

Prior to 2007, the ODMEIO's Federal employees devoted considerable man-hours planning, developing, and executing NFE outreach events. Once the NFEs were identified and the levels of financial support were determined, the respective ODMEIO GS-15 program managers worked with the NFEs to develop programs and agendas for the outreach events. Witnesses testified that due to the amount of work involved in coordinating the outreach events, USD(P&R) leadership authorized ODMEIO to contract for administrative support.

In 2007, ODMEIO entered into a fixed-price contract with Deloitte Consulting LLP (Deloitte) for support to enhance its participation in outreach events.⁶ The Deloitte contract has been continually renewed and remains ongoing. ODMEIO's FY 2012 contract with Deloitte was initially valued at \$436,218.72 and later modified to \$480,554.18. The contract's Performance Statement of Work requires Deloitte's "Outreach Operations Team" to "plan, program budget, and execute on multiple affinity group outreach events in support of ODMEIO Diversity strategy and program objectives." Deloitte provides a team of three full-time contractor employees who work in the ODMEIO office spaces.

The Deloitte outreach team's event planning in support of the ODMEIO mission has included producing the outreach calendar; working with the NFEs in tailoring their forums "to showcase DoD," building agendas, finding speakers, preparing scripts, and preparing pamphlets, among other things. A witness testified that the Deloitte team briefs "Mr. Johnson, [the Deputy Director], and the other directors" on an event status, and a team member travels to the event "either with Mr. Johnson or with the [program manager] and then we execute that event." Often, senior military officers and Federal SES civilians, including Mr. Johnson, speak and participate at ODMEIO-supported NFE events, and the ODMEIO outreach team often arranges for military

⁶ The original 2007 contract was with BearingPoint LLC, whose North American public services practice was sold to Deloitte in May 2009. Further iterations of the contract were with Deloitte.

color guards to appear as well.

ODMEO's Funding of NFE Outreach Events

From 2003 until mid-2010, ODMEO primarily supported NFE events by using ORF to pay for lunches and banquets associated with NFE award or recognition ceremonies.⁷ In order to use ORF, ODMEO requested and received approval from USD(P&R) in advance of an event. Over the years, ODMEO requested ORF for a typical event in the amount of \$25,000, the approval limit for USD(P&R). Mr. Johnson testified that in 2001 ODMEO spent approximately \$5,000 in ORF, but by 2008-09 ODMEO's annual ORF expenditures grew to \$400,000, making it USD(P&R)'s largest spender of ORF dollars. Mr. Johnson testified that during 2006-07, the rules and oversight for using ORF were "a little bit more lax," but in 2009 the scrutiny "got a little heavier."

For CY 2009, ODMEO internal records show ODMEO spent \$473,484.34 in ORF for outreach events. In 2010, ODMEO's funding for outreach events with ORF declined due to limitations on the availability of ORF implemented by the USD(P&R).⁸ In CY 2010, ODMEO spent \$175,298 of ORF for outreach sponsorships.

ODMEO Contract with NCMS

ODMEO's contracting officer representative (COR) testified that in 2010 she believed ODMEO could continue to fund NFE events using a contract mechanism rather than ORF and that doing so would promote efficiency in the delivery of outreach sponsorships. The COR stated that in early 2010, she briefed Mr. Johnson on the concept, and he directed her to move forward with it. The COR coordinated with Army Contract Command – National Capital Region (ACC-NCR) to develop a sole-source contract with NCMS, a small company that qualified for a Section 8(a) set-aside, which is a type of non-competitive, sole-source selection.⁹ NCMS had previously conducted technical assistance workshops for ODMEO pursuant to a different contract.¹⁰

In April 2010, ACC-NCR prepared a new solicitation for \$498,976, which included \$224,000 for "Outreach Sponsorship." In an April 15, 2010, email to Mr. Johnson, the ODMEO COR documented how the NCMS solicitation would fund NFE sponsorships and stated that the Government was ready to award the contract. The COR stated, "Pending availability of year end

⁷ DoD Instruction 7250.13 restricts using ORF to hosting "official receptions, dinners, and similar events" to maintain the standing and prestige of the United States and the Department of Defense.

⁸ In a May 9, 2010, USD(P&R) memorandum, Dr. Stanley wrote: "Recent budget and authority projections for ORF indicate that there are more requests in P&R than funds available. I am making hard and authoritative decisions regarding budget priorities."

⁹ Per the Small Business Administration Act.

¹⁰ NCMS' initial contract to provide Technical Assistance Workshops for ODMEO was valued at \$174,585 on September 23, 2008.

funds, we may add additional funds ... later, particularly as we expand our outreach portfolio.”¹¹ Mr. Johnson responded to the COR by email and wrote, “Again, ya [*sic*] done good!”

On May 3, 2010, an ACC-NCR contracting officer approved the NCMS contract with an effective award date of April 30, 2010. The contract included an allocation of \$224,000 in a contract line item (CLIN) for “ODCs – Outreach Sponsorship.”¹² The brief description of the CLIN states, “ODCs – Outreach Sponsorships and required material with prior approval from the COR.”

The contract solicitation was less than the \$500,000 threshold to trigger a mandatory legal review under existing ACC-NCR guidelines. ACC-NCR did not conduct a legal review in April 2010. After ACC-NCR awarded the contract, the Defense Finance and Accounting Service directly funded NCMS to perform duties as specified in the various CLINs.

The Deloitte contract, which provided on-site administrative support to ODMEIO for NFE event planning, remained in effect. The NCMS contract did not provide for on-site support to ODMEIO.

NCMS Sponsorship Payments to NFEs

From August to October 2010, NCMS executed \$226,000 in sponsorship payments to NFEs by sending checks to the respective NFEs from its company bank account. NCMS check memo annotations stated “ODMEIO Sponsorship Program.” Copies of the cancelled checks show that the NFEs cashed or deposited each of the checks. Wide Area Workflow printouts of NCMS contract activity show Defense Finance and Accounting Service disbursements to NCMS of \$172,000 in July 2010 and \$78,000 in September 2010, both payments earmarked for the Outreach Sponsorship CLIN in the NCMS contract. Additionally, NCMS monthly reports and charts prepared by NCMS for ODMEIO show outreach sponsorship payments to NFEs.

On July 7, 2010, an ODMEIO senior civilian employee sent an email with the subject “Sponsorship Disbursements” to the ODMEIO COR with a courtesy copy to Mr. Johnson. The email contained an attachment titled “Office of Diversity Management and Equal Opportunity (ODMEIO) Fiscal Year (FY) 2010 Sponsorships,” which listed proposed sponsorship amounts totaling \$261,000 for 14 NFEs. The senior employee wrote:

Attached is the list of organizations and the dollar amount approved for sponsorship activities. The disbursements total \$261K. The total amount of sponsorship dollars allocated to the New Concepts contract is \$225K. I received Mr. Johnson’s approval to transfer \$36K from our POM dollars (ORC account 1418) to the New Concepts contract. This will allow New Concepts to fully fund the sponsorship amount indicated for each organization.

¹¹ Per (b)(6), (b)(7)(C) email of July 7, 2010, Mr. Johnson did in fact add \$36,000 to the NCMS contract.

¹² The acronym “ODC” in the contract means “other direct costs.”

On July 8, 2010, Mr. Johnson replied to the foregoing email directing the COR to “take the lead” and “lay out all expenditures (ORF and sponsorships) by organization we spent or will spend this FY.” He added, “When complete, send it to me and let’s plan to discuss this further.”

The first outreach sponsorship payments from NCMS to selected NFEs were triggered by a July 23, 2010, email from an ODMEIO senior civilian employee to NCMS (in which the COR and Mr. Johnson were courtesy copied). The email included an attached chart identifying the NFEs, the NFE points of contact, and the amounts to be paid. Initial NCMS payments were made to NAACP Leadership 500, the Patriots Technical Training Center, the U.S. Air Force Academy Alumni Way of Life Committee, and the Tuskegee Airmen Youth Outreach Luncheon.

ODMEIO’s COR directed NCMS to execute NFE sponsorship payments with Mr. Johnson’s knowledge and approval. In its October 2010 report, NCMS stated, “ODMEIO requested the status of the remaining \$78K in sponsorship funding distribution” for several NFEs. Email exchanges between the ODMEIO COR and NCMS during October and November 2010 indicate NCMS made sponsorship payments to NFEs based on direction from ODMEIO’s COR and in coordination with ODMEIO program managers. The ODMEIO COR testified that NCMS sent “payment to the organizations” based on the decisions of “either Mr. Johnson or someone that he has designated as acting to approve the release of funds to the organization.”

The table below reproduces an NCMS chart prepared for ODMEIO and shows the total sums distributed by NCMS in 2010. In evaluating the allegation against Mr. Johnson, we did not include sponsorship payments made by NCMS to NFEs after Mr. Johnson’s October 2010 departure from ODMEIO, although the total sponsorship payments for CY 2010 totaled \$301,000. ODMEIO did not execute co-sponsorship agreements with any of the supported NFEs.

ODMEIO Sponsorship 2010	
Total Funded: \$301,000	
DISBURSEMENTS	
1st Distribution (8/23/2010)	
Society of American Indian Gov’t Employees	\$12,000
Asian American Gov’t Executive Network	25,000
Thurgood Marshall College Fund	25,000
Morgan State University – MSIRPC	15,000
NAACP Leadership 500	25,000
Patriots Technology Training Center	20,000
USAF Academy Way of Life Alumni Group	25,000
Tuskegee Airmen Youth Outreach Luncheon	25,000
2nd Distribution (9/28/2010)	
Latina Style Outreach	\$20,000
Minority Access, Inc.	15,000
Heroes and Heritage	7,000

TIYM Publishing Company	8,000
3rd Distribution (10/12/2010)	
Heroes and Heritage	\$4,000
4th Distribution (11/5/2010)	
NOMAR	\$10,000
LULAC	25,000
HENAAC	25,000
JJA	15,000
Total Distributed	\$301,000

ODMEO emails and testimony indicate Mr. Johnson approved the foregoing NFE sponsorships prior to October 15, 2010, when he was temporarily detailed to the Department of the Army. The COR for the NCMS contract testified that NCMS funded ODMEO-selected NFEs approved by Mr. Johnson. The COR also testified that Mr. Johnson first established the list of supported organizations in 2004 and that Mr. Johnson is ODMEO's approval authority for the expenditure of funds. Additional documentary evidence indicated NCMS made several sponsorship payments to NFEs in November 2010 and May 2011.

Illustrative ODMEO Support to NFE Outreach Events

ODMEO's support to two NFEs in 2010 illustrates ODMEO's planning and development of the NFE events. ODMEO paid \$25,000 via the NCMS contract to support the Thurgood Marshall College Fund (TMCf) Leadership Institute Conference, which was held in New York from October 29 to November 1, 2010.¹³

In a letter dated October 15, 2010, Mr. Johnson thanked a Department of Air Force employee for agreeing to moderate the DoD Executive Coaching Session at the TMCf Conference. The ODMEO COR worked with NCMS to develop a list of "Potential Questions for Students at Coaches/Mentors Session" and to develop scripts for the session. ODMEO personnel and Deloitte and NCMS contractors traveled to the event. ODMEO coordinated the participation of a Deputy Assistant Secretary of the Army as a keynote speaker for a plenary luncheon as well as senior military officers to lead various workshops. The ODMEO COR served as the master of ceremonies for a plenary luncheon, the ODMEO senior military advisor spoke at the "Personal Leadership Branding Workshop," and the ODMEO Acting Director presented "remarks on behalf of DoD" at the October 30, 2010, plenary luncheon. ODMEO did not execute a co-sponsorship agreement with TMCf for this event.

ODMEO paid \$12,000 via the NCMS contract in support of the Society of American Indian Government Employees (SAIGE), for its 7th Annual National Training Conference in Uncasville, Connecticut, from June 14-18, 2010. An ODMEO GS-15 (b)(6), (b)(7)(C) and Deloitte and NCMS contractors traveled to and attended the event. DoD hosted one of five pre-conference forums from 1-5 p.m. on June 14, 2010. DoD also hosted a Military Awards Banquet

¹³ Mr. Johnson was detailed on October 15, 2010, so the Acting Director represented ODMEO at the conference.

on June 15, 2010, from 6:30 to 8 p.m. There was a presentation of colors for the opening ceremony on June 15, 2010, and five DoD members were speakers or presenters at various sessions. ODMEIO did not execute a co-sponsorship agreement with SAIGE for this event.

Discontinuing Use of the Term "Sponsorship"

Emails, correspondence, and testimony indicate that from at least 2008 through October 2010, ODMEIO used the term "sponsorship" in internal and external communications to describe the process of coordinating DoD financial support for NFE events. In October 2010, the DoD Office of General Counsel (DoD OGC) advised ODMEIO not to use the word "sponsorship" to describe the DoD relationship with NFEs.¹⁴ DoD OGC's advice was in response to a draft sponsorship policy package ODMEIO had submitted for review. The ODMEIO COR for the NCMS contract informed NCMS of OGC's advice. The NCMS' monthly report for October 2010 noted that OGC "cited the ethics regulation" and stated "do not use the term sponsorship."

2011 Legal Review of the NCMS Contract

In April 2011, as the NCMS contract was coming up for its annual renewal, ODMEIO requested ACC-NCR to make a major modification to the NCMS contract. An ACC-NCR senior contracting officer reviewed the contract and noted the sponsorship CLIN had a large allocation for other direct costs.¹⁵ The contracting officer recognized that large allocation as being similar to an issue identified in a previous audit of ACC-NCR, and he flagged the contract for legal review.

In May 2011, ACC-NCR conducted a legal review of the NCMS contract and determined that ODMEIO had not executed co-sponsorship agreements with sponsored NFEs as required by the JER. The former ACC-NCR attorney stated that none of the groups being "sponsored" by ODMEIO had been properly reviewed by DoD OGC. The ACC-NCR attorney's legal review concluded that the CLIN used to execute NFE sponsorship payments was improper. When the initial contract period expired in May 2011, the ODMEIO Principal Director did not renew the NCMS contract based on the ACC-NCR attorney's recommendation.¹⁶

The ACC-NCR attorney who conducted the 2011 contract review explained that the initial contracting officer who prepared the 2010 NCMS contract apparently did not recognize there was a JER issue associated with ODMEIO's co-sponsorships of NFEs. The attorney stated that had she conducted a legal review in April 2010, she "would have insisted on verification" of ODMEIO's JER compliance before recommending approval of the NCMS contract.

ODMEIO records do not show co-sponsorship agreements with any NFE nor do the records show any DoD OGC reviews of ODMEIO co-sponsorship activities with NFEs, including

¹⁴ In a May 10, 2013, email, a DoD OGC attorney stated in part, "we have consistently said over the last few years that DoD should not generally use the word 'sponsor' to describe the DoD relationship with a non-Federal entity unless there is an actual co-sponsorship agreement in place."

¹⁵ Normally, a fixed-price contract does not have a large allocation for "other direct costs."

¹⁶ Captain Ken Barrett, U.S. Navy (Retired) was ODMEIO's Principal Director when the NCMS contract was not renewed. Mr. Johnson was on a detail to the Army at that time.

the period from August through October 2010 when NCMS executed sponsorship payments to NFEs while Mr. Johnson was the Principal Director of ODMEIO.

After declining to renew the contract option year with NCMS in May 2011, ODMEIO changed its practice from using a single contract (such as the 2010 NCMS contract) to entering into individual contracts with each NFE for specific deliverables in exchange for DoD support. That remains ODMEIO's current practice, which we did not review in the course of this investigation.

How Other DoD Components Accomplish Co-sponsorships of NFEs

The Office of Government Ethics (OGE) has stated, "There is no single definition of co-sponsorship applicable throughout the Executive Branch," and noted "some agencies have definitions that apply within the agency" or even specific statutory authority. OGE also stated that the DoD has defined co-sponsorship in the JER, which lists mandatory requirements for DoD Components seeking to co-sponsor NFEs. The JER states that co-sponsorship occurs when the DoD Component "is one of the organizations that develops the substantive aspects of the event or provides substantial logistical support for the event." Under the JER, co-sponsorships of events with NFEs are generally prohibited, except when five requirements are met, including the execution of a written agreement between the DoD Component and the NFE that identifies funding responsibilities, liabilities of the parties, a disclaimer of Government liability if DoD withdraws, and a promise by the NFE to not imply DoD endorsement of the NFE.

Some DoD Components provide additional guidance on how to legally accomplish co-sponsorship of an NFE. For example, the General Counsel of the Army (Army GC) requires co-sponsorship agreements to be "reviewed and approved by each Deputy DAEIO [Designated Agency Ethics Official]." The Army GC noted "abuses" in some co-sponsorship relationships and stated that each DAEIO must be "vigilant to ensure that only co-sponsorships meeting all of the requirements in JER 3-206 are approved." The Army GC recommended adherence to a specific co-sponsorship agreement template. A Department of the Air Force template for co-sponsorship agreements contains specific provisions, including but not limited to the responsibilities of the parties, security clearances, contract termination, pre-publication review and copyright, disclaimer of liability or endorsement, and funding responsibilities and costs.

Mr. Johnson's Testimony

Mr. Johnson testified he did not recall executing co-sponsorship agreements with any ODMEIO-supported NFEs and added he did not believe ODMEIO executed any co-sponsorship agreements. Mr. Johnson testified he assumed the ACC-NCR and his COR had followed normal processes and conducted legal reviews. He stated he never requested a legal review nor asked whether ACC-NCR conducted a legal review of the NCMS contract. He added, "The one who's running the contract" (the COR) would be responsible for ensuring a legal review was conducted.

Mr. Johnson acknowledged using the term "sponsorship" to describe ODMEIO's support of NFE events and testified that it was the "wrong word" to use. He stated:

And, obviously, we used the wrong term in our communication, "sponsorship," but that's what we used. And, quite honestly, I knew that word. I don't know exactly when I heard it was taboo, but I know obviously we used it before. And I know obviously we used it before. And I know I've heard attorneys say we shouldn't say "sponsorship," in fact.

Mr. Johnson stated that he has never been informed that ODMEIO "did anything improper as far as sponsorships are concerned." He testified, "I will only comment that my office is neither engaged in any engagement, sponsorship or otherwise, unless it went through GC [Office of General Counsel] review. I will stand on that without a doubt."

In the position description for the ODMEIO Principal Director (dated June 9, 2006), Factor 3, "Guidelines," states, "the incumbent must ensure that policies and programs are developed in compliance with existing laws, regulations, and directives and must reflect Administration objectives and DoD guidelines."

Discussion

We conclude Mr. Johnson improperly co-sponsored NFEs. We found that Mr. Johnson decided which NFEs received ODMEIO support and the levels of such support, both monetary and logistical, in furtherance of ODMEIO's diversity mission. We found that in early 2010, USD(P&R) increased its scrutiny of ORF requests, that the availability of ORF decreased, and that ODMEIO sought alternative ways to provide monetary support to NFEs. In April 2010, the ODMEIO COR briefed Mr. Johnson on the idea of using a contractor to pay for NFE co-sponsorships. Mr. Johnson approved this concept and directed his COR to proceed. The COR used the section 8(a) set-aside procedure to select NCMS. We found that after the NCMS contract took effect, Mr. Johnson approved disbursement by NCMS of \$226,000 in co-sponsorship payments to NFEs from August through October 2010.

We further found that ODMEIO staff and contracted support personnel, at Mr. Johnson's direction, worked closely with NFEs in planning, developing, and executing the substantive aspects of NFE events that received ODMEIO funding. We found no evidence that ODMEIO ever executed a written agreement for any NFE event that it co-sponsored, including during the period of August through October 2010.

JER 3-206 provides authority for a DoD agency to fund an NFE in conjunction with a co-sponsorship agreement with the NFE. The JER also prohibits co-sponsorship of NFE events unless specific requirements are met. A DoD Component or organization becomes a co-sponsor of an event when it develops the substantive aspects of the event or provides substantial logistical support. The JER requires DoD entities to accomplish co-sponsorship through written agreements with NFEs that include the nature and purpose of each event, the undertakings and liabilities of the parties, funding responsibilities and costs, and other requirements.

We determined ODMEIO co-sponsored numerous NFEs by using staff resources to negotiate, plan, and execute NFE outreach events, by providing logistical support to the NFEs in

executing their events, and by using the NCMS contract to fund NFE “outreach sponsorships.” Further, in May 2011, ODMEIO did not renew the NCMS contract as an NFE funding mechanism when it was advised of the JER’s co-sponsorship agreement requirement. Instead, from May 2011 to the present, ODMEIO directly entered into specific contracts with NFEs for outreach event deliverables in exchange for DoD support.

We determined that during the period August through October 2010, Mr. Johnson did not execute co-sponsorship agreements with any of the supported NFEs and that he authorized funding for NFE co-sponsorships through NCMS, a third-party contractor. Mr. Johnson did not comply with JER 3-206, specifically the requirement to execute written agreements with co-sponsored NFEs. Mr. Johnson did not act reasonably to ensure ODMEIO entered into written co-sponsorship agreements with the NFEs he selected and authorized for funding. His stated reliance on the ODMEIO COR and ACC-NCR to conduct due diligence did not obviate his responsibility to ensure compliance with the JER. Accordingly, we conclude Mr. Johnson’s approval to use NCMS to make \$226,000 in co-sponsorship payments resulted in ODMEIO improperly co-sponsoring the NFEs and was inconsistent with the JER.

By letter dated July 8, 2014, we provided Mr. Johnson the opportunity to comment on the results of our investigation. In his response dated September 2, 2014, Mr. Johnson disagreed “with the conclusion that [his] office’s diversity outreach engagements” were “inconsistent with the JER.” Mr. Johnson stated that Chapter 3 of the JER does not apply to “[ODMEIO’s] diversity outreach methodology” because ODMEIO does not provide “substantial logistical support” or “develop the substantive aspects” of any supported NFE event. Mr. Johnson further stated in his response to our tentative conclusions, “We do not engage any event without a specific agreement we work with the NFE.” Notwithstanding Mr. Johnson’s assertions, he did not provide an illustrative copy of any co-sponsorship agreement to support his argument.

Although Mr. Johnson asserted in his response to the preliminary report that his office does “not engage any event without a specific agreement we work with the NFE,” we found no evidence of written agreements between ODMEIO and any of the supported NFEs during the period we examined, August through October 2010. We found that Mr. Johnson’s assertion does apply to ODMEIO’s current practice of contracting directly with supported NFEs, a practice that began in May 2011, prior to Mr. Johnson’s return to ODMEIO as the Principal Director.

Mr. Johnson further stated in his response to our preliminary report that JER 3-206 does not apply to the methodology ODMEIO employs to engage with NFEs. Mr. Johnson cited a policy provision in the DoD “Ethics Counselor’s Deskbook” as being applicable to his office’s practice. The Ethics Counselor’s Deskbook states, “the Heads of DoD Component organizations, in their business judgment, may procure sponsorships, exhibitor booths, or similar items at an NFE event.” We found that JER 3-206 applied to ODMEIO’s outreach engagements with NFEs during August through October 2010 and that the JER 3-206 requirements are specifically cited in the same chapter of the Ethics Counselor’s Deskbook Mr. Johnson relies on in his response. Further, the Deskbook guidance suggested by Mr. Johnson requires the component head to issue some authorization to “procure sponsorships, exhibitor booths, or similar items at an NFE event.” We found no evidence that the USD(P&R), the head of Mr.

Johnson's component, issued any such authorizations during the period August through October 2010.

After carefully considering Mr. Johnson's response and reevaluating the evidence, we stand by our conclusion that Mr. Johnson improperly co-sponsored NFEs he had selected during the period August to October 2010, in violation of the JER.

B. Did Mr. Johnson create an intimidating, offensive, or hostile working environment?

Standards

DoD 5500.07-R, Joint Ethics Regulation, August 30, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Chapter 12, "Ethical Conduct," Section 4, "Ethical Values," states:

Ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties. These values include "accountability," "fairness," "caring," and "respect."

Section 4, Paragraph 12-401, "Primary Ethical Values," elaborates on those characteristics as follows:

- Fairness requires that individuals be treated equally and with tolerance.
- Caring demands courtesy and kindness, both to those we serve and to those we work with, to help ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.
- Respect involves treating people with dignity, honoring privacy, and allowing self-determination. Respect is critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

DoDD 1020.02, "Diversity Management and Equal Opportunity (EO) in the Department of Defense," dated February 5, 2009

Paragraph 4.d (5) provides that the DoD Civilian EEO Program shall "identify and eliminate barriers and practices that impede EEO for all employees and applicants for employment, including sexual and non-sexual harassment in the workforce."

DoDD 1440.1, "The DoD Civilian Equal Employment Opportunity (EEO) Program," dated May 21, 1987

Paragraph 4.6 states it is DoD policy to "eliminate barriers and practices that impede equal employment opportunity for all employees and applicants for employment, including sexual harassment in the work force and at work sites."

Enclosure (2), paragraphs E2.1.10 and subparagraph E2.1.10.3, define sexual harassment as "a form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" when "such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive environment."

Subparagraph E2.1.10.3 continues: "Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment."

Secretary of Defense (SECDEF) Memorandum, "Final Recommendations of the Ft. Hood Follow-on Review," August 18, 2010

SECDEF directed USD(P&R) to "develop DoD policy and guidance on the prevention of workplace violence."¹⁷

Facts

The incoming complaint alleged Mr. Johnson created a hostile working environment by not taking appropriate action when a male contractor employee assaulted a female contractor employee in the workplace. The complaint also alleged the male contractor sexually harassed contractor and Government female employees.¹⁸

¹⁷ In May 2012 the Defense Civilian Personnel Advisory Service, an office within USD(P&R), published "Workplace Violence Prevention and Response," in response to SECDEF's 2010 directive. The guide defines workplace violence as "any act of physical violence against persons or property, physical or verbal threats, intimidation, harassment, or other inappropriate, disruptive behavior that causes fear for personal safety at or outside of the work site."

¹⁸ Federal appellate courts have characterized the term "assault" under 18 U.S.C. 113, "Assaults within maritime and territorial jurisdiction," as being more inclusive than under common law and encompassing elements that would have fallen under traditional definitions of battery as well as assault. We did not interview the male contractor.

The male contractor employee worked in ODMEO for (b)(6), (b)(7)(C) when the Acting Principal Director requested that the contractor's employer, (b)(6), (b)(7)(C), remove him from the workplace following an unrelated complaint from an ODMEO GS-15 program manager.

Physical Assault

On September 22, 2010, the male contractor approached the workstation of a female contractor to discuss an urgent request from the ODMEO senior military advisor who was away from the office. The female contractor did not recognize the urgency of the military advisor's request. The male contractor told her that they had to call the senior military advisor right away and reached for the telephone on her desk. While reaching for the phone, the male contractor pushed the chair she was sitting in, forcing her and the chair into her desk.

A witness sitting adjacent to the female contractor's cubicle workstation testified she heard a noise and stood up to see what had happened. She stated that the male was positioned over the female and that the female appeared "very startled" and "very upset." She added that the female contractor said loudly to the male, "Don't touch me."

The female contractor testified that she heard the male contractor walking very quickly toward her workstation as she was typing. She stated:

He came and he pushed me, you know, and my chair just went that way. There was all this commotion. He reached over and grabbed my phone and I was afraid to look up.

The female contractor stated that the male "just stood there for what felt like two minutes," but was really "maybe about 35 or 45 seconds." She testified that the male contractor was "just waiting for me to look at him, and I wouldn't look at him," and finally he "walked away." She testified, "the commotion was so loud" that a co-worker stood up and asked if she had fallen. She responded that she had not. The female contractor employee also testified that when the male pushed her chair, her left arm impacted her desk, causing a minor injury. She added that the incident caused her to cry. No one else was present during the incident.

Reporting and Internal Review

On the day of the incident, the female contractor spoke separately with her company manager and an ODMEO Government employee. The manager reported the incident to the company's human resources office.

On September 23, 2010, the Government employee emailed the ODMEO EEO advisor and (b)(6), (b)(7)(C), another ODMEO GS-15 employee, to report the incident. The email stated that the male contractor struck the female contractor's arm, "pushed her body aside as she sat in her chair, and blocked her path leaving her unable to exit the cube." The EEO advisor forwarded the email to Mr. Johnson and recommended that he contact the male contractor's employer to request the contractor employee's immediate removal. The EEO advisor wrote,

“This could result in an EEO complaint, the notoriety of which could be highly embarrassing for our office unless we take prompt remedial action.”

(b)(6), (b)(7)(C) testified that after receiving the email, he called Mr. Johnson, who was out of the office on temporary duty at the time. Mr. Johnson directed (b)(6), (b)(7)(C) to conduct a review of the matter and report back to him with recommendations. (b)(6), (b)(7)(C) testified he spoke with the female contractor, the male contractor, and the witness who heard the commotion. He stated that the female contractor was upset but did not describe the incident as an “assault.” (b)(6), (b)(7)(C) added that based on the way the incident was first described to him in the email, he expected the female contractor to say more than she did. (b)(6), (b)(7)(C) stated he did not write a report, but he briefed Mr. Johnson shortly after the incident. (b)(6), (b)(7)(C) recommended that Mr. Johnson meet with the parties to resolve the matter.

On September 27, 2010, Mr. Johnson emailed an invitation to both contractors to meet with him.¹⁹ The female contractor employee declined the invitation because she did not want to be in the same room as the male. As a result, Mr. Johnson met with the parties separately. Mr. Johnson also met with the witness who heard the commotion. Mr. Johnson testified:

I was very, very cognizant of the fact whether or not he had touched her. That was important to me. And she [the female contractor] told me that he did not touch her.

On September 28, 2010, Mr. Johnson met with the female contractor employee, her company manager, and the ODMEC COR, one of his senior staff members. Mr. Johnson testified he thought the matter was satisfactorily resolved during the meeting. He stated that his EEO advisor’s recommendation to have the male contractor employee removed from ODMEC was “too reactionary” because at the time he did not have enough information to justify removal. Mr. Johnson confirmed that he did not report the incident either to the Pentagon Force Protection Agency (PFPA) or to his immediate supervisor.²⁰

Mr. Johnson testified that he did not characterize the incident as “workplace violence.” He further testified, “Quite honestly, this didn’t rise to the level of anything that was other than a workplace issue.” He stated that once he concluded the male contractor employee did not assault the female contractor employee, he met with the male contractor employee, (b)(6), (b)(7)(C). Mr. Johnson testified that he “took the gloves off” and sternly counseled the contractor about the deportment required to work in an administrative office.

At the time of the September 2010 incident, DoD did not have a promulgated standard governing workplace violence. In an August 18, 2010, memorandum regarding the Fort Hood, Texas, follow-up study, SECDEF noted the absence of a satisfactory administrative standard for addressing workplace violence. In response to SECDEF’s memorandum, Defense Civilian

¹⁹ (b)(6), (b)(7)(C) notified Mr. Johnson of the incident on Thursday, September 23, 2010. Mr. Johnson emailed the meeting invitation to the contractors the following Monday, September 27, 2010.

²⁰ The victim reported the incident to the Pentagon Force Protection Agency (PFPA) on November 1, 2010. PFPA opened an investigation, conducted witness interviews, and closed the case with no findings or recommendations after learning the male contractor had been removed from the ODMEC workplace.

Personnel Advisory Service (DCPAS) developed and promulgated the May 2012 guide, "Workplace Violence Prevention and Response," to address workplace violence in DoD.

Mr. Johnson testified that he was not familiar with the DCPAS guide. After reviewing it, he acknowledged he would have handled the September 2010 incident differently if the DCPAS guide had been in effect at the time.

Male Contractor's Offensive Behavior

Three female witnesses testified that they observed the same male contractor routinely touch and massage the genital area of his pants while speaking to them. The witnesses clarified that the touching often continued throughout the conversation. One witness, when asked to describe what the male contractor was doing, stated, "He was fondling his package."

Each witness testified she was offended and perceived the touching to be of a sexual nature – none thought the touching was inadvertent or accidental. None of the witnesses testified that they told Mr. Johnson about the male contractor's behavior.

Five witnesses who did not directly observe the male contractor's behavior testified that they had heard about it. None of the five testified they informed Mr. Johnson about what they had heard.

Mr. Johnson testified that no one from ODMEIO informed him about the male contractor's behavior prior to his temporary detail in October 2010. He testified that such behavior could constitute sexual harassment and added that had he been informed he would have directed or requested an investigation into the matter.

On November 17, 2010, Mr. Ronald Joe, Mr. Johnson's successor as ODMEIO Principal Director, requested the removal of the male contractor employee after a workplace disagreement with a senior Government employee about office administrative procedures.

Discussion

We conclude Mr. Johnson did not create or cause an intimidating, offensive, or hostile working environment. We found that when Mr. Johnson learned of alleged workplace violence involving a male contractor employee and a female contractor employee, he initiated an internal, informal review of the alleged violence. The female contractor did not characterize the incident as an assault during the review. Mr. Johnson met with the parties involved and verbally counseled the male contractor.

We also found that at the time of the incident, DoD did not have a promulgated standard governing workplace violence. Mr. Johnson acknowledged he would have handled the incident differently if a standard had existed. We further found that Mr. Johnson did not know about the same male contractor employee's alleged offensive self-touching behavior because no one told him about it.

The JER requires that employees treat individuals with dignity and respect. DoDD 1440.1 states that a supervisor engages in sexual harassment when he or she “uses or condones implicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee.”

We determined Mr. Johnson’s handling of the alleged assault met minimally accepted expectations for addressing the allegation under the circumstances. Given the lack of an appropriate DoD administrative standard for addressing allegations of workplace violence at the time of the incident, and considering the information provided to Mr. Johnson by the parties, we determined Mr. Johnson’s efforts to ascertain the facts and resolve the matter did not cause or encourage a hostile working environment. Accordingly, we conclude Mr. Johnson did not violate any applicable standard with regard to handling the workplace incident.

We also determined Mr. Johnson did not know about the male contractor’s offensive self-touching behavior in the workplace. Although the contractor’s self-touching behavior was unwelcome and offensive to several of the female Government employees and contractor employees, they did not inform Mr. Johnson of it. We determined that since Mr. Johnson did not know about the contractor employee’s offensive behavior, he did not condone it and, consequently, did not engage in sexual harassment. Accordingly, we conclude Mr. Johnson did not violate JER and DoD EEO directives in this instance.

V. OTHER MATTERS

During the course of our fieldwork, we received information alleging ongoing gross mismanagement in ODMEO of temporary duty (TDY) travel voucher and civilian employee time and attendance approval processes. Although the evidence indicated Mr. Johnson did not engage in direct management or oversight of those programs and was unaware of any systemic problems, we found numerous anomalies warranting an in-depth review. Accordingly, we refer the following issues to USD(P&R) for review and corrective action, as appropriate.

Improper approval process for TDY travel vouchers

Evidence confirmed the existence of deficient ODMEO processes for review and approval of TDY travel vouchers.²¹ For years, an untrained and uncertified ODMEO (b)(6), (b)(7)(C) employee approved and certified some TDY travel vouchers for ODMEO personnel. The employee did not obtain required training until May 2013 after we brought the matter to the attention of ODMEO officials.

A review of ODMEO TDY travel vouchers revealed numerous issues with TDY travel vouchers submitted by an ODMEO GS-15 employee.²² Some of the voucher issues included but are not limited to the following:

²¹ We did not find evidence of travel impropriety on the part of Mr. Johnson.

²² Mr. Johnson testified he was unaware of the employee’s problems with the Government Travel Credit Card (GTCC) or filing improper TDY travel vouchers.

- Failure to file travel vouchers within the 5-day period;
- Failure to provide hotel receipts and flight itineraries with the travel claims;
- Inconsistent and confusing dates on travel vouchers (for example, one date recorded for all cab fares used during a TDY period);
- Unauthorized claims and reimbursement for baggage handling fees;
- Inability to determine whether employee was on leave, earning compensatory time, or using a non-duty day during weekends of TDY period;
- Use of a centrally billed account instead of an individually billed account for travel expenses; and
- Failure to use a Government travel credit card (GTCC).²³

Civilian personnel time and attendance issues

Several witnesses testified about a GS-15 employee's reputation for coming to work late, leaving work for long lunches or personal errands, and not showing up for work for long periods. Mr. Johnson testified that due to the employee's long commute, the daily start time flexed from 9:00 a.m. to 10:00 a.m. He added that he "gets 8 hours of work a day" from the employee, whom he often sees in the office after others have left for the day.

Mr. Johnson's successor as Principal Director during Mr. Johnson's temporary detail to the Army testified that he did not see the employee in the workplace and could not make contact during his first 6 weeks on the job in early 2011.²⁴

We reviewed the employee's Pentagon access records and time and attendance records from 2010 through 2012. We did not find definitive indications of time and attendance abuse. However, we note the following anomalies concerning ODMEIO civilian employee time and attendance policies:

- Premium time entitlements: Several witnesses, including Mr. Johnson, testified that credit hours, compensatory time, and compensatory time for travel were not authorized in ODMEIO. This belief and apparent practice by ODMEIO personnel appears to be inconsistent with Federal law and DoD regulations.
- Telework requirements: Mr. Johnson indicated he is philosophically resistant to telework agreements. He testified he had not approved any telework agreements prior to leaving ODMEIO in October 2010. When he returned in 2012, several telework agreements were in effect, and he chose to continue them. However, he testified that he is uncomfortable with GS-15 employees using telework, and he is in conflict with some employees regarding the need for telework hours to coincide with an approved work schedule. For instance, he recently disapproved an employee's request to commence telework at 6:30 a.m. when the employee's in-office work schedule began later.

²³ The employee's GTCC had been suspended in the past and was renewed in October 2012.

²⁴ Our review of Pentagon access records showed the absence was approximately 3 weeks long. The employee testified the absence was due to (b)(6), (b)(7)(C).

- Documentation of TDY work periods: Reviews of travel schedules, time and attendance records, and TDY travel claims demonstrate that ODMEO employees frequently work on weekends and after normal work hours during TDY periods. However, employees did not document such time in their time and attendance records or in DTS. In one example, an employee worked on a weekend during TDY, traveled home on a Monday, and reported to work in the office on the following Tuesday. However, the employee simply claimed a straight 40-hour week in the certifying time and attendance documentation.

VI. CONCLUSIONS

A. Mr. Johnson authorized payments for co-sponsorships of NFEs in a manner inconsistent with the JER.

B. Mr. Johnson did not create an intimidating, offensive, or hostile working environment.

VII. RECOMMENDATIONS

We recommend USD(P&R):

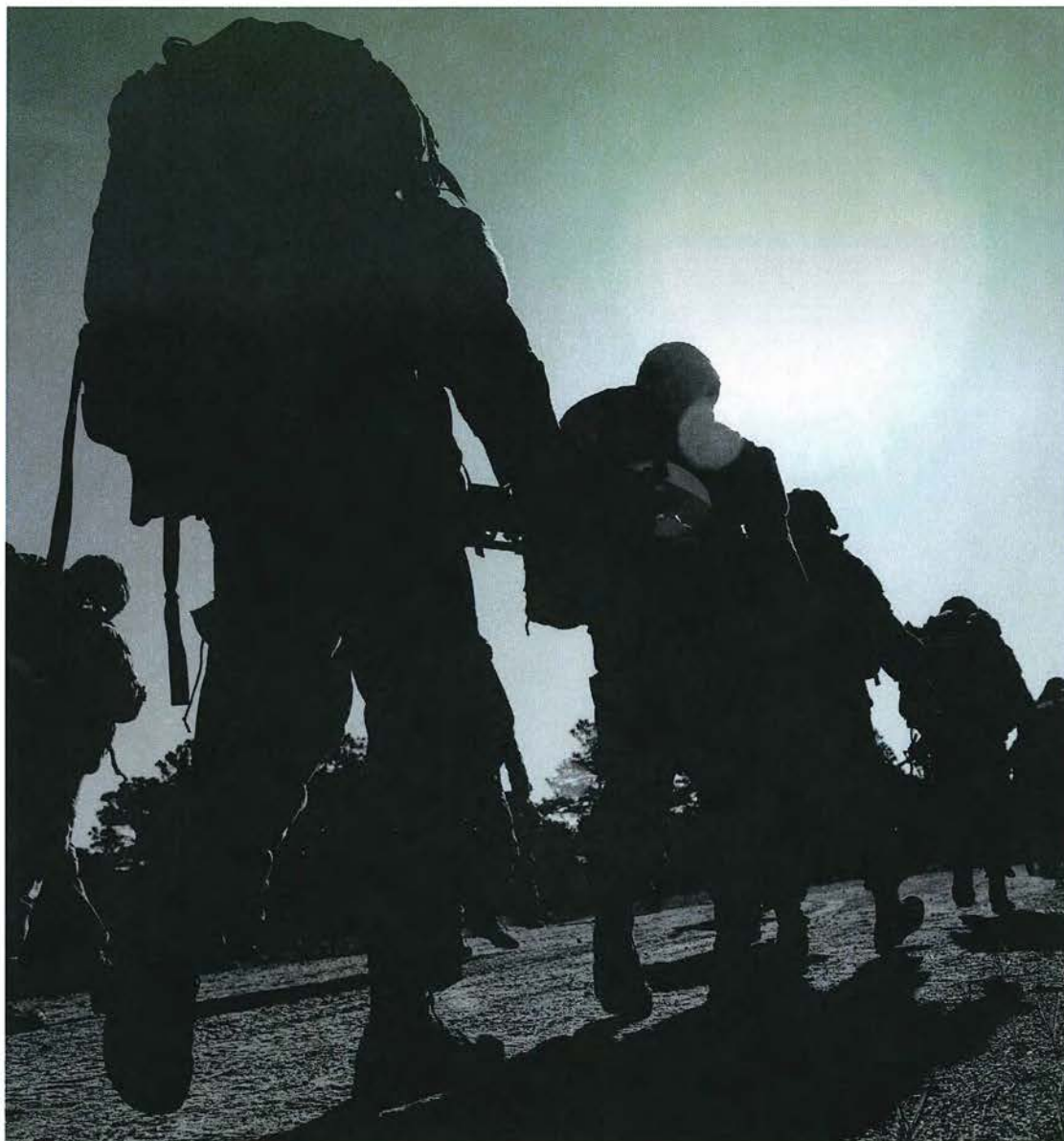
A. Consider corrective action regarding Mr. Johnson.

B. Review existing ODMEO outreach contracts to evaluate their compliance with the JER requirements for co-sponsorship of NFEs.

C. Review the travel, time and attendance, and other matters referred to in Section V, above.

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